



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1191]

Certain Audio Players and Controllers, Components Thereof, and Products Containing Same

Notice of a Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and a Cease and Desist Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that respondent Google LLC (“Google”) has violated section 337 of the Tariff Act of 1930, as amended, by importing, selling for importation, or selling in the United States after importation certain audio players and controllers, components thereof, and products containing the same that infringe one or more claims of U.S. Patent Nos. 9,195,258; 10,209,953; 9,219,959; 8,588,949; and 10,439,896. The Commission has determined that the appropriate remedies are a limited exclusion order and a cease and desist order against Google. The Commission has also determined to set a bond in the amount of 100 percent of the entered value of the infringing products imported during the period of Presidential review. This investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On February 11, 2020, the Commission instituted this investigation based on a complaint filed by Sonos, Inc. (“Sonos”) of Santa Barbara, California. 85 FR 7783 (Feb. 11, 2020). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (“section 337”), based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain audio players and controllers, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 9,195,258 (“the ’258 patent”); 10,209,953 (“the ’953 patent”); 8,588,949 (“the ’949 patent”); 9,219,959 (“the ’959 patent”); and 10,439,896 (“the ’896 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named as respondents Google and Alphabet Inc. (“Alphabet”), both of Mountain View, California. *Id.* The Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.*

On September 21, 2020, the Commission terminated the investigation as to Alphabet based on withdrawal of the allegations in the complaint directed to Alphabet. Order No. 18 (Sept. 1, 2020), *unreviewed by Comm’n Notice* (Sept. 21, 2020). On November 24, 2020, the Commission determined that the importation requirement has been satisfied. Order No. 27 (Oct. 27, 2020), *unreviewed by Comm’n Notice* (Nov. 24, 2020). On February 2, 2021, the Commission determined that the technical prong of the domestic industry requirement has been satisfied as to the ’949 patent. Order No. 32 (Jan. 4, 2021), *unreviewed by Comm’n Notice* (Feb. 2, 2021). On February 16, 2021, the Commission determined that the economic prong of the domestic industry requirement has been satisfied as to all asserted patents. Order No. 35 (Jan. 14, 2021), *reviewed and aff’d by Comm’n Notice* (Feb. 16, 2021). On March 12, 2021, the Commission partially terminated the investigation based on withdrawal of the allegations in the complaint as to the following asserted claims: claims 22 and 23 of the ’258 patent; claims 12 and 13 of the ’953 patent; claims 5, 9, 29, and 35 of the ’959 patent; and claim 3 of the ’896 patent. Order No. 58 (Feb. 23, 2021), *unreviewed by Comm’n Notice* (Mar. 12, 2021).

On August 13, 2021, the CALJ issued a combined initial determination (“ID”) on violation and a recommended determination (“RD”) on remedy and bonding. The ID finds violations of section 337 with respect to the following claims of the asserted patents: claims 17, 21, 24, and 26 of the ’258 patent; claims 7, 14, and 22-24 of the ’953 patent; claim 10 of the ’959 patent; claims 1, 2, and 5 of the ’949 patent; and claims 1, 5, 6, and 12 of the ’896 patent. ID at 180-82. The RD recommends that, should the Commission determine that violations of section 337 occurred, the Commission should: (i) issue a limited exclusion order against Google; (ii) issue a cease and desist order against Google; and (iii) set a 100 percent bond for any importations of infringing products during the period of Presidential review. RD at 182-88.

On August 27, 2021, Sonos and Google each filed a petition seeking review of certain findings in the ID. On September 7, 2021, the private parties filed responses to each other’s petitions, and OUII filed a combined response to both petitions.

On September 13, 2021, the Commission received eight submissions on the public interest from members of the public in response to the Commission’s *Federal Register* notice. See 86 FR 46715 (Aug. 19, 2021). The Commission did not receive submissions on the public interest from the parties pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

On November 19, 2021, the Commission determined to review the ID in part with respect to the ID’s analysis of whether the products accused of infringing the ’258 and ’953 patents are articles that infringe at the time of importation. 86 FR 67492 (Nov. 26, 2021). The Commission also determined to correct two typographical errors on pages 24 and 84 of the ID. *Id.* The Commission did not request briefing on any issue under review. *Id.* The Commission’s notice also requested written submissions on remedy, the public interest, and bonding. *Id.*

On December 2, 2021, Sonos, Google, and OUII each filed initial submissions on remedy, the public interest, and bonding. That same day, the Commission also received four additional submissions on the public interest from members of the public. On December 10, 2021, Sonos, Google, and OUII each filed reply submissions on remedy, the public interest, and

bonding.

The Commission, having reviewed the record in this investigation, including the final ID, the parties' petitions and responses thereto, has determined that Google has violated section 337 by importing into the United States, selling for importation, or selling in the United States after importation certain audio players and controllers, components thereof, and products containing the same that infringe one or more of claims 17, 21, 24, and 26 of the '258 patent; claims 7, 14, and 22-24 of the '953 patent; claim 10 of the '959 patent; claims 1, 2, and 5 of the '949 patent; and claims 1, 5, 6, and 12 of the '896 patent.

The Commission has determined that the appropriate remedy is: (i) a limited exclusion order prohibiting the importation of certain audio players and controllers, components thereof, and products containing the same that infringe one or more of claims 17, 21, 24, and 26 of the '258 patent; claims 7, 14, and 22-24 of the '953 patent; claim 10 of the '959 patent; claims 1, 2, and 5 of the '949 patent; and claims 1, 5, 6, and 12 of the '896 patent; and (ii) a cease and desist order against Google. The Commission has determined that the public interest factors do not preclude issuance of a remedy. The Commission has also determined to set a bond in the amount of 100 percent of the entered value of the infringing products imported during the period of Presidential review (19 U.S.C. 1337(j)).

The Commission issues its opinion herewith setting forth its determinations on certain issues. This investigation is hereby terminated.

The Commission's orders and opinion were delivered to the President and United States Trade Representative on the day of their issuance.

The Commission vote for this determination took place on January 6, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: January 6, 2022.

Lisa Barton,

Secretary to the Commission.

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